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IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-91

R. W. JONES, SR., ET AL.,
Petitioners,

v.

CHARLES T. WOLF, ET AL.,
Respondents.

**BRIEF OF UNITED STATES CATHOLIC
CONFERENCE AMICUS CURIAE**

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CONSENT OF THE PARTIES

Both the petitioners and respondents have consented in writing to the filing of this brief amicus curiae by the United States Catholic Conference.

INTEREST OF THE AMICUS

I.

Identification of the Amicus

The United States Catholic Conference is a nonprofit corporation and an agency through which the Catholic Bishops of the United States collaborate with other members of the Church—priests, religious and laity—in areas where voluntary collective action on an inter-

diocesan and national basis can benefit the Church and Society.

USCC is an agency of the Catholic Bishops of the United States. Its predecessor, established in 1919, was known as the National Catholic Welfare Conference. The prime purpose of USCC is to unify and coordinate activities of the Catholic people of the United States in programs and works of education, social welfare, health and hospitals, family life, immigrant aid, poverty assistance, civic education, youth activities, communications and public affairs, with emphasis on the preservation of religious liberty in America.

II.

Interest of the Amicus in This Case

This case presents the question of Free Exercise rights of a church in the matter of internal governance. This amicus has a direct interest in the proper adjudication of disputes implicating these important First Amendment rights.

ARGUMENT

Church property disputes cannot be severed from matters of governance and internal structure in the manner which took place in the instant case. The constitutionally required approach is, we believe, to consider such disputes in their totality, always bearing in mind that there may very well be First Amendment implications in the resolution of such a dispute. It is a misreading of the *Serbian Orthodox* line of cases to view such disputes as requiring adjudication by "neu-

tral principles".¹ Not all church property disputes can be resolved by "neutral principles". Only those instances where the right of governance and the internal autonomy of the church are not in issue are susceptible to resolution by "neutral principles":

"Even when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. Because of this danger, 'the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.' *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969)." *Serbian Orthodox v. Milivojevic*, 426 U.S. 696, at 709.

The courts are forbidden under the First Amendment from imposing an ecclesiology on a church entity. Moreover, the constitutional limitations upon the court's power cannot be avoided through the use of "neutral principles". The method of induction employed by the court below in the instant case accomplished indirectly what the court could not do directly. The court below found that the absence of any instructions in the *Book of Order* dealing with the disposition of church property in a schism meant that the matter was to be resolved by "neutral principles" of property law. Specifically, the court construed the absence of such direction or language to mean that all disputes

¹ *Watson v. Jones*, 80 U.S. 679 (1871); *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929); *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960); *Presbyterian Church v. Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevic*, 426 U.S. 696 (1976).

should be resolved solely on the basis of deeds and other instruments of property ownership which can be taken into evidence. By this process the property of the Presbyterian Church of the United States was abstracted from the internal structure and governance mechanisms of that institution. Implicit in this decision is the notion that there could be nothing in the ecclesiology of the Presbyterian Church of the United States which could be controlling in the dispute. The property holding devices were deemed to be the only admissible evidence as to the disposition of the property.

The difficulty with this approach is readily apparent when one examines the court's line of reasoning which led to the result below. The court below adopted an argument from silence: that the fact that the *Book of Order* does not mention disposition of property in schism is probative that the property is to be disposed of by majority rule of the local congregation. The *Book of Order* is the organic constitution of the Presbyterian Church of the United States. It cannot be presumed to control schismatic churches. It can only be presumed to control those within its jurisdiction. The Vineland community was part and parcel of the General Assembly of The Presbyterian Church of the United States. According to the terms of the organic structure of that church, the disputes about the nature of the organization are to be resolved within the various adjudicatory bodies enumerated in the ascending hierarchical structure. Part of the Vineland community remains within the General Assembly of the Presbyterian Church of the United States.

The organization of the Presbyterian Assembly has not been altered by virtue of the schism. That organi-

zation remains intact. It has adherents that still reside in Vineland, Georgia. Obviously, those adherents, those members, are governed by the rules of governance of the General Assembly. The *Book of Order* provides the means for the General Assembly to identify its adherents.

Through the *Book of Order* the General Assembly has placed property management of its institutions in the hands of the local congregation. The *Book of Order* cannot be used to generate an argument of silence that the nature of the church has been changed by the structuring of the components of the institution. Obviously, the *Book of Order* could just as well have said that the property shall be held in the name of some other entity within the Presbyterian Church. It is the *Book of Order* which controls which entity shall hold title to the church property. Through the *Book of Order*, church governance has occurred. The General Assembly of the Presbyterian Church of the United States has made decisions about where property shall be vested, and it has the right, obviously, to decide the property shall be vested in some other manner. One cannot use the manner in which the property is held to deny the authority of the General Assembly.

The effect of the respondent's arguments would be to conclude that property holding device controls governance, whereas under the First Amendment governance should control property. The effect of the respondent's argument is that the General Assembly of The Presbyterian Church of the United States has lost its authority to identify its members because it chose to have the property held in the name of the local congregation.

The decision of the court below makes explicit reference to the fact that the court took no notice of those portions of the *Book of Order* which related to matters of internal structure and governance:

“Appellants cite other sections of the Book of Order pertaining to church courts. These deal with faith and the internal structure of the church but do not deal with property rights.” App. Pet. 15a.

The court sought to treat the schism as a simple property dispute by separating property from governance. The court was inevitably forced to set the property question over against the governance question so that in the result the nature of the property holding device controlled and, in fact, eliminated the question of governance. An implicit decision on the ecclesiology of the Presbyterian church was reached through induction from the manner in which the property was held.

The court below reached the decision that The Presbyterian Church of the United States is “merely connectional”. App. Pet. 15a. Through an induction that nature of the church could be construed from the nature of the property holding device. Since the property was held by the local congregation, the church could not be hierarchical, but merely connectional.

Churches exist in time and space. The spiritual work which they carry on, both in worship and in the works of service, takes tangible and physical manifestations in property: hospitals, orphanages and schools, as well as churches, rectories and parsonages.

The consequence of considering property as distinguishable from the church is to view the church as

somehow existing apart and separately from its physical, tangible elements. To suggest that church property can be treated by “neutral principles” which have no relevance to the First Amendment is to suggest that churches can, in fact, be cut up and dealt with in a piecemeal fashion without cognizance of the organic nature of the institution.

Religious bodies throughout the United States, including this *amicus*, have for a variety of reasons chosen to organize their activities into a number of civil structures. Nevertheless, none of these bodies would disown those activities. The civil life of those components may be varied, but the relationship to the ecclesiastical body remains intact, and significantly, these various structures owe their existence to the ecclesiastical bodies which called them into being.

The property holding devices may or may not reflect accurately the polity of the sponsoring church. The ecclesiology of a given religious body may not be expressible in civil terms. In point of fact, the canonical and spiritual life of the Roman Catholic Church is incapable of complete expression in Anglo-American civil law terms. The institutional forms of the Roman Catholic Church in the United States are always only an approximation of the nature of the Church. The Supreme Court decisions that have dealt with such problems have shown a remarkable sensitivity to the problem which translation of religious ecclesiology into civil terms poses.

“The hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interest in matters of purely ecclesiastical concern.” *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969).

CONCLUSION

The court below chose to ignore the nature of the governance of The Presbyterian Church of the United States. In our view, the court was duty-bound under the First Amendment Free Exercise Clause to take judicial notice of the fact that the church is governed by the authority of various levels of decision-making, and not by the will of a congregation. Civil courts are not free to ignore the nature of church governance in resolving church property disputes.

Respectfully submitted,

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